

## NETWORK HUT LICENSE AGREEMENT

This Equipment Housing License Agreement ("Agreement") is entered into by the municipal entity ("City") and the Google Fiber company ("Licensee") identified on the signature page of this Agreement. City and Licensee agree to the terms and conditions set forth below. Collectively, City and Licensee may be referred to herein as the "Parties".

1. **Purpose.** Licensee needs rights to occupy and use various real property sites that may be owned by the City. The sites will be used for the purpose of constructing structures that will house network equipment and fiber that are part of Licensee's fiber optic network ("Network Hut"). The purpose of this Agreement will serve to establish the terms and use of the Network Huts. The construction of each Network Hut will be based on the specifications described in Exhibit A to this Agreement, which may be amended by mutual written agreement of the Parties.
2. **Location of Sites for Network Huts.** Licensee will identify and propose to the City the location of various City owned sites. Licensee and City will work together to agree upon each site to be used for each Network Hut. When Licensee and City agree upon specific sites, the parties will complete and sign the form attached as Exhibit B to this Agreement, entitled "Network Hut Site Lease Terms," ("Site Lease Terms") for each site ("Network Hut Site"). The Site Lease Terms shall include a legal description of the Network Hut Site, the fees to be paid for use of the site and any other special terms or requirements applicable to the Network Hut Site. Licensee's occupancy and use of each Network Hut Site will be subject to this Agreement, including the terms set forth in the applicable Site Lease Terms.
3. **Licensee Rights and Obligations.** City grants to Licensee the right to access, enter, occupy and use each Network Hut Site at any time for the purpose of constructing, operating and maintaining each Network Hut in accordance with the terms of this Agreement and pursuant to the conditions agreed to by the Parties in the Site Lease Terms negotiated for each Network Hut Site. City grants these rights solely to the extent it has such rights, title and interest in and to the Network Hut Site, without any express or implied warranties. Licensee will obtain all applicable licenses, permits and other authorizations required to construct, operate and maintain the Network Hut and offer Licensee's services. Licensee will construct the Network Hut in accordance with all applicable laws and permitting requirements. Licensee will use and maintain the Network Hut Site in accordance with all applicable laws and requirements applied on a non-discriminatory basis, and will keep the site secure (based on applicable standards) and reasonably free from debris, litter and graffiti.
4. **Effective Date and Term.** This Agreement is effective on the last date it has been signed by both parties ("Agreement Effective Date"). The initial term of the Agreement is ten (10) years from the Agreement Effective Date. Following the initial term, this Agreement may be renewed by mutual agreement for successive two (2) year periods by a separate agreement. Similarly, individual Site Lease Terms shall be effective on the last date it is signed by both Parties after approval by the Durham City Council ("Site Lease Terms Effective Date"). The initial term of the Site Lease Terms for each Network Hut Site will be ten (10) years from the Site Lease Terms Effective Date subject to Durham City Council approval. Following the initial term of individual Site Lease Terms, the Site Lease Terms may be renewed by mutual agreement for successive two (2) year periods by a separate lease terms agreement. The Parties shall notify each other at least ninety (90) days prior to the expiration of any Site Lease Terms or any renewal period of

their intent with respect to such renewal.

5. **Termination of Agreement or Site Lease Terms.** Licensee may terminate this Agreement or the Site Lease Terms for a specific Network Hut Site at any time with thirty (30) days written notice to the City. City may terminate this Agreement in the event of a material breach of this Agreement by Licensee and Licensee fails to cure the alleged breach within sixty (60) days of receipt of notice from City. City may also terminate the Site Lease Terms for a Network Hut Site by providing a minimum of one hundred eighty (180) days written notice to Licensee if the City determines that the applicable Network Hut Site is needed by City for a reasonable and necessary public use. Following such written notice, City agrees to use its best efforts to find an alternative City owned site that Licensee may use as a replacement. Upon any termination or expiration of this Agreement, in whole or in relation to a particular Network Hut Site, Licensee will vacate premises and return site to its original condition.
6. **Fees and Costs.** Licensee agrees to pay to City the annual fee of \$2 per square foot for each Network Hut Site. Licensee agrees to pay to City the fees set forth in the Site Lease Terms for each Network Hut Site. The fees shall be paid on an annual basis for each Network Hut Site. Licensee shall be responsible for all its costs associated with construction, operation and maintenance of the Network Hut and Network Hut Site. Payments shall be delivered by Licensee within forty-five (45) days of the payment due date agreed upon by the parties.
7. **Indemnification.** Licensee will defend and indemnify City, its officers, elected representatives, and employees from any claims and liabilities related to any third party claim for property damage, personal injury or death to the extent caused by Licensee or its contractors. Licensee will have the right to control the defense of any such claim. If, in City's reasonable judgment, a conflict exists between the interests of City and Licensee in such a claim, City may retain its own counsel whose reasonable fees will be paid by Licensee.
8. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION SHALL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE STATE LAW.
9. **Insurance.** Licensee agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following coverages and limits. The requirements contained herein are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this agreement
  - a. Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$1,000,000 aggregate.
  - b. Automobile Liability – Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Licensee does not own automobiles, Licensee agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

- c. Worker's Compensation & Employers Liability – Licensee agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statutes Chapter 97 and with limits of no less than \$1,000,000 each accident, each employee and policy limit.
- d. Additional Insured – Licensee agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.
- e. Certificate of Insurance – Licensee agrees to provide City of Durham a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. The City's manager will be included as a person to be notified under the policy. The Certificate Holder address should read:

City of Durham  
Attn: City Manager  
City Hall Plaza  
Durham, NC 27701

- f. Umbrella or Excess Liability – Licensee may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Licensee agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.
  - g. All insurance companies must be authorized to do business in North Carolina and have no less than an A VIII rating or better.
10. **Notice.** All notices related to this Agreement will be in writing and sent to the address set forth in each signature block to this Agreement. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.
11. **General Provisions.** This Agreement is governed by the laws of the state where the Network Huts are located. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. This Agreement may not be assigned by Licensee without the consent of City except for assignments to Licensee's affiliates or in connection with a merger, acquisition, sale of network assets or similar transactions. This Agreement sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter. This Agreement, including any exhibits, constitutes the entire Agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. City acknowledges that Licensee may: (a) use electronic signatures; and (b) be subject to the provisions of the U.S. E-

SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (ESIGN, Pub.L. 106-229, 14 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch.96).

**LICENSEE:** \_\_\_\_\_

**CITY:** \_\_\_\_\_

**(Authorized Signature)**

**(Authorized Signature)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Title)**

\_\_\_\_\_  
**(Title)**

**Address:** 1600 Amphitheatre Parkway  
Mountain View, CA 94043

**Address:** \_\_\_\_\_

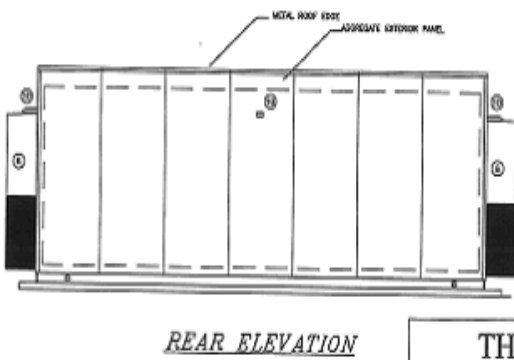
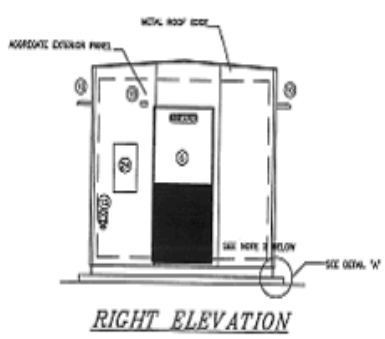
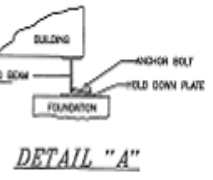
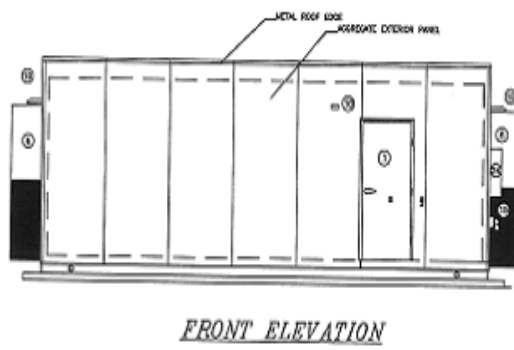
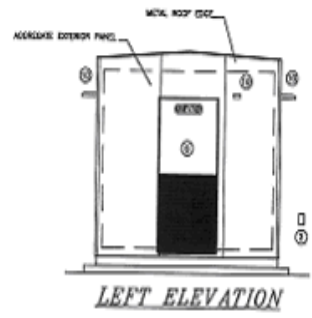
**Date:**

**Date:**

EXHIBIT A

NETWORK HUT SPECIFICATIONS

EXHIBIT B



1. NO TAGS OR ANY MARKING IS TO BE SHOWN ON THE EXTERIOR OF THE BUILDING OR DOORS. INSTALL 8"X8" ALUMINUM PLATE ON THE INTERIOR OF THE BUILDING FOR ALL TAGS AND INSIGNIAS.
2. ADD AN EXTENSION TO EACH AIR CONDITIONER DRAIN TUBE TO DRAIN WATER AWAY FROM THE FOUNDATION.

PROJECT  
GOOGLE FIBER

THIS DRAWING CONTAINS  
PROPRIETARY INFORMATION OF  
THERMOBOND BUILDINGS, LLC. IT IS  
INTENDED SOLELY FOR THE  
CONSTRUCTION AND INSTALLATION OF THE  
EQUIPMENT DESCRIBED HEREIN AND  
MAY NOT BE USED, REPRODUCED  
OR DISCLOSED TO ANY OTHER  
PARTIES FOR ANY OTHER PURPOSE  
WITHOUT THE EXPRESSED WRITTEN  
PERMISSION OF THERMOBOND  
BUILDINGS, LLC.

THERMOBOND  
BUILDINGS

299 N. Court 7.0, Box 445, Elk Point, SD 57528-0445  
Phone: 605-355-3393, www.ThermoBond.com

Scale: 1/16" = 1'	Title: EXTERIOR LAYOUT FOR 11'-6"W. X 28'L. X 9'H. BLDG.
Date: 7/24/12	PROJECT NUMBER:
Drawn By: DRL	Design Number: ACB8881
Approved By:	Rev. Date: 4/12/13
	PAGE: 6 OF 15

**EXHIBIT B**

**NETWORK HUT SITE LEASE TERMS**

1. **Legal Description of Network Hut Site Location (describe below or attach legal description).**
2. **Annual Fees:**
3. **Other terms or requirements applicable to Network Hut Site.**

**LICENSEE:** \_\_\_\_\_ **CITY:** \_\_\_\_\_

**(Authorized Signature)**

**(Authorized Signature)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Title)**

\_\_\_\_\_  
**(Title)**

**Address:** 1600 Amphitheatre Parkway  
Mountain View, CA 94043

**Address:**

**Date:** \_\_\_\_\_

**Date:**